

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

Willie Joe Sturkey, #146039)	Civil Action No. 8:08-2758-MBS
)	
Plaintiff,)	
)	
v.)	ORDER AND OPINION
)	
Jon Ozmint, <i>et. al.</i> ,)	
)	
Defendants.)	
_____)	

Plaintiff Willie Joe Sturkey, a pro se prisoner, filed this action pursuant to 42 U.S.C. § 1983 on August 6, 2008, alleging violations of his constitutional rights. Plaintiff filed a separate request for a temporary restraining order (TRO) on December 22, 2008. (Entry 21). Plaintiff is currently housed in the South Carolina Department of Corrections (SCDC) prison system.

Plaintiff's motion for temporary restraining order alleges that he has been subjected to excessive force and retaliation. Plaintiff also contends that he was transferred to Evans Correctional Institution in December 2007 as punishment for filing an earlier lawsuit and his legal documents were improperly seized twice.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Bruce Howe Hendricks for pretrial handling. The Magistrate Judge filed a Report and Recommendation on January 30, 2009. The Magistrate Judge recommended that Plaintiff's motion for TRO should be denied because Plaintiff: (1) failed to provide the Court with any facts regarding the alleged excessive force and retaliation claims and failed to show that irreparable harm is likely if his motion is denied; (2) failed to present any evidence or allege that he

is under any threat or that the plaintiff's legal documents will be seized again; and (3) failed to establish likelihood of success on the merits of his claim or that granting an injunction would serve the public interest. Plaintiff filed objections to the Magistrate Judge's Report on February 23, 2009.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.*

I. DISCUSSION

A temporary restraining order is extraordinary relief. In determining whether to grant injunctive relief prior to trial, a court must consider four factors: (1) the plaintiff's likelihood of success in the underlying dispute between the parties; (2) whether the plaintiff will suffer irreparable injury if the injunction is not issued; (3) the injury to the defendant if the injunction is issued; and (4) the public interest. *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 271 (4th Cir. 2002).

Plaintiff has not offered any specific factual objections to the Magistrate Judge's conclusions. Plaintiff generally objects to the Magistrate Judge's finding that the requisite showing for obtaining a temporary restraining order have not been made. (Entry 38, at 4). Plaintiff also filed attachments that essentially reassert the merits of his claim. (Entry 38, attachments 2-6). The court is not obligated to conduct a *de novo* review of the Magistrate Judge's Report "when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed

findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Nevertheless, the court has carefully reviewed the record and concurs with the Magistrate Judge that there is no basis for granting a temporary restraining order.

II. CONCLUSION

The court adopts the Magistrate Judge’s Report and Recommendation. Plaintiff’s motion for TRO (Entry 21) is **denied**. This case is recommitted to the Magistrate Judge for additional pretrial handling.

IT IS SO ORDERED.

s/Margaret B. Seymour
Margaret B. Seymour
United States District Judge

July 16, 2009
Columbia, South Carolina